

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

OCT 19 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of the Commission's Rules)	WT Docket No. 97-81
Regarding Multiple Address Systems)	
)	

REPLY COMMENTS OF RADSCAN, INC.

Radscan, Inc. ("Radscan"), by its attorneys, and pursuant to § 1.415 of the Commission's Rules, hereby submits its reply comments in response to the *Further Notice of Proposed Rule Making* in the above-captioned proceeding.¹ In its comments, Radscan urged the Commission to leave the current licensing and eligibility rules for the 928/952/956 MHz bands intact because those rules (under which licenses are awarded on a first-come, first-served basis subject to prior frequency coordination) satisfy the Commission's obligation to avoid mutual exclusivity before turning to auctions.² This position was supported by a substantial number of the parties responding to the Further Notice.³

Radscan also urged the Commission not to restrict any part of the 928/952/956 MHz bands to "public safety radio services" because such a restriction would impose unnecessary costs on

-
1. Amendment of the Commission's Rules Regarding Multiple Address Systems, *Further Notice of Proposed Rule Making and Order*, FCC 99-101 (rel. July 1, 1999) ("Further Notice").
 2. Comments of Radscan at 3-5; Pub. L. No. 105-33, Tit. III, 111 Stat. 251 (1997), amending Section 309(j) of the Communications Act ("Balanced Budget Act").
 3. See, e.g., Comments of American Petroleum Institute ("API") at 10; Association of American Railroads at 2-3; CellNet Data Systems, Inc. ("CellNet") at 4-10; Commonwealth Edison at 4-11; Itron at 3-4; United Telecom Council ("UTC") at 5.

incumbent users without any corresponding benefits.⁴ Parties who favor such a restriction ignore these costs. For example, the American Water Works Association (“AWWA”) suggests that after restricting the 928/952/956 MHz band to public safety radio services, current licensees not meeting that restriction should be required to relocate within five years.⁵ However, AWWA does not suggest how these licensees should be compensated for the potentially enormous costs of this relocation.⁶ Moreover, AWWA fails to recognize, as the Commission has, that in some cases licensees cannot simply convert to other frequencies without the loss of some or all of the services those licensees provide.⁷

At least one party requests that the Commission restrict the 928/952/956 MHz bands to so-called “critical infrastructure industries.”⁸ However, this is a fabricated term without legal significance. There is no “infrastructure” requirement anywhere in the Balanced Budget Act or its

4. Comments of Radscan at 5-7.

5. Comments of American Water Works Association at 6.

6. *See* Comments of Radscan at 6 & n.17 (referring to comments of other parties in WT Docket No. 99-87 describing the costs of relocation).

7. *See* Amendment of Rules to Eliminate Grandfathering Provisions Applicable to Licensees on MAS Frequencies, *Memo. Op. and Order*, 8 FCC Rcd 2801, 2802 (“the disruption that would result from compliance with [certain equipment phase-out requirements] would be detrimental to the economic viability of industries that employ MAS systems”). *See also* Comments of CBPC at 4 n.7 (“no licensee, public safety or commercial, should have to undergo the disruption of shifting frequencies”); UTC at 11 (“grandfathering [as opposed to relocation] is essential to preventing the disruption and/or dislocation of MAS operations that will be subject to the Commission’s new rules”); East Bay Municipal Utility District (“EBMUD”) at 14 (no rule should require an incumbent licensee to “downsize, reconfigure, relocate, recoordinate or in any other manner disturb its existing authorizations”).

8. Comments of API at 5. Whereas UTC discusses “critical infrastructure industry” entities in several places, it does not advocate setting aside the 928/952/956 MHz bands for these users. *See* Comments of UTC at 7.

legislative history, and no party has supplied a definition by which a determination could be made whether a given use satisfies such a requirement.⁹

In view of the strong demand for more spectrum and the heavily encumbered nature of the 928/952/956 MHz bands, the Commission should set aside all or a significant portion of the nearly vacant 932/941 MHz bands exclusively for public safety radio services. Any portion of those bands that is set aside for public safety radio services will be exempt from auctions by virtue of the Balanced Budget Act. In addition, given that the current licensing process largely avoids mutual exclusivity, the Commission should award licenses in any portion of the 932/941 MHz bands that is *not* set aside for public safety radio services on a first-come, first-served basis subject to prior frequency coordination. In this manner it can avoid entirely the use of auctions in the MAS bands while remaining faithful to the commands of the Balanced Budget Act.

If, despite the Balanced Budget Act's requirement to avoid mutual exclusivity among applicants wherever possible, the Commission decides to award licenses for a portion of the 932/941 MHz band by auction, then it may be necessary to impose some kind of eligibility or licensing restriction on the remaining licenses in the 928/952/956 MHz bands. This restriction may be necessary to avoid a situation in which applicants can get for free in the 928/952/956 MHz bands what they would have to pay for in the 932/941 MHz bands. In such a case, Radscan would agree with the several parties who argue that the 928/952/956 MHz bands should be restricted to private, internal uses.¹⁰ This is the least onerous of the eligibility restrictions that the Commission could

9. See Comments of API at 5 n.4 (stating what "critical infrastructure industries" includes, but not what it excludes).

10. See, e.g., Comments of United Telecom Council ("UTC") at 7 ("the Commission should designate the 928/952/956 MHz band for private internal communications, as the Commission proposed in its initial *Notice*"). To the extent that UTC's comments could be read to further restrict the bands only to critical infrastructure industries (and assuming that
(continued...))

impose. Indeed, given that the Commission recently determined that a number of important uses of the MAS bands were private, internal uses,¹¹ and given that not one commenter has proposed any use *other* than private, internal uses, this may include substantially all of the current uses of the bands.¹² A restriction to private, internal use would preserve the remaining frequencies in the 928/952/956 MHz bands from speculative licensing by commercial operators.

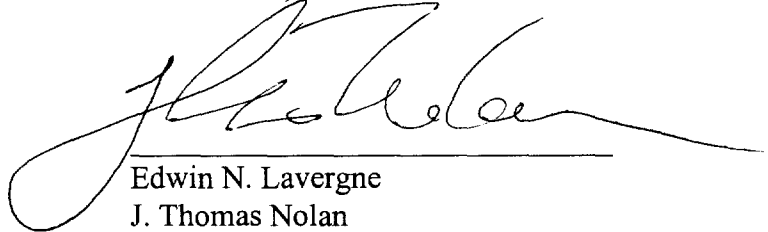
If the Commission imposes any licensing or eligibility restriction on the 928/952/956 MHz bands (which, for the reasons given above, it should not), current licensees that do not meet the restriction must be protected.¹³ While grandfathering may be an option, it is feasible *only* if grandfathered licensees are given the ability to expand and fill in existing systems operating on their current frequencies.¹⁴ Thus, Radscan opposes UTC's proposal to restrict non-eligible grandfathered licensees to their current master station authorizations as of February 19, 1997.¹⁵ Such a restriction

-
10. (...continued)
"critical infrastructure industries" excludes certain kinds of current MAS uses) Radscan disagrees for the reasons set forth above. *See also* Comments of Comsearch at 2 (interpret "public safety radio services" broadly to include private internal communications to the extent possible); Comments of Corn Belt Power Cooperative ("CBPC") at 4 (supporting Commission's previous proposal to reserve band for private internal uses requires modified only to require that the usage be safety-related).
 11. GTECH Corporation et al., *Memo. Op. and Order*, 13 FCC Rcd 4290 (1998).
 12. *See* Comments of CBPC at 4 ("the comments have shown that the vast majority of the private usage is in fact safety-related").
 13. *See* Comments of CBPC at 4; EBMUD at 14.
 14. *See* Comments of CellNet Data Systems at 20 ("expansion of existing service areas, or expansions related to existing service contracts, for otherwise non-eligible grandfathered systems should be permitted"); EBMUD at 14 (incumbent licensees should be able "to modify their MAS facilities during the pendency of this proceeding"). *See also* Comments of Association of American Railroads, Attachment 1 at 5-7 (noting need for expansion of incumbent systems if spectrum is auctioned).
 15. *See* Comments of UTC at 11-12.

would require licensees who wish to develop their systems to migrate to other frequencies, and then to retrofit existing equipment in order to maintain compatibility with the new frequencies. It therefore would be tantamount to a forced relocation, which even UTC acknowledges is a burden MAS licensees should not be forced to bear.¹⁶

Respectfully submitted,

RADSCAN, INC.

A handwritten signature in black ink, appearing to read 'Edwin N. Lavergne', written over a horizontal line.

Edwin N. Lavergne
J. Thomas Nolan
Shook, Hardy & Bacon LLP
600 14th Street, N.W., Suite 800
Washington, D.C. 20005-2004
(202) 783-8400
Its Attorneys

October 19, 1999

16. *See id.* at 11.